

GREENBRIER ENERGY, INC.

IBLA 93-373

Decided April 9, 1996

Appeal from a decision of the State Director, Eastern States Office, Bureau of Land Management, affirming assessment of \$250 for failure to place a well identification sign at a well site within the prescribed time period. OHES 43851.

Reversed; assessment vacated.

1. Oil and Gas Leases: Civil Assessments and Penalties—Oil and Gas Leases: Incidents of Noncompliance

Violation of 43 CFR 3162.6, requiring the posting of a well identification sign including specific information for every well within a Federal or Indian lease or supervised agreement, is a minor violation and BLM may properly assess an operator \$250 under 43 CFR 3163.1(a)(2) for failure to abate a minor violation within the time allowed. However, where the evidence establishes that the operator placed the required sign at the well site within the time allowed, the assessment will be vacated.

APPEARANCES: Carl Heinrich, President, Greenbrier Energy, Inc., Reno, Ohio, for appellant.

OPINION BY DEPUTY CHIEF ADMINISTRATIVE JUDGE HARRIS

Carl Heinrich, President of Greenbrier Energy, Inc. (Greenbrier), has appealed, on behalf of Greenbrier, from a March 25, 1993, decision of the State Director, Eastern States Office, Bureau of Land Management (BLM), affirming the issuance by the Milwaukee District Office of a Notice of Incidents of Noncompliance (INC) and a Bill for Collection for \$250 assessed against Greenbrier for failure within a prescribed period of time to place a sign at its Williams #1 well in sec. 3, T. 4 N., R. 6 W., Washington Township, Monroe County, Ohio, within the Wayne National Forest. 1/

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1/ At the time of issuance of the INC, Greenbrier operated the well under Compensatory Royalty Agreement OHES 43851, effective Jan. 1, 1991. It held a special use permit from the Forest Service, U.S. Department of Agriculture, authorizing use of the surface for its well and accompanying facilities.

On December 9, 1992, a BLM employee visited Greenbrier's Williams #1 well and its tank battery. Thereafter, he issued INC's to Greenbrier, including the one at issue for "[n]o well sign present as required" by "43 CFR 3162.6." <sup>2/</sup> The INC described the violation as a minor violation and provided 30 days after receipt of the notice within which to take corrective action. Although the INC directed that, when corrective action had been taken, the INC should be signed and returned to BLM, there is no evidence in the record that Greenbrier returned it to BLM. Greenbrier did, however, return another INC issued on the same date indicating correction of a violation at the tank battery.

On February 11, 1993, a Forest Service employee visited the well site and in what was described as "a follow up letter [dated February 23, 1993] on your request for assistance concerning posting of identification on Williams #1 well site" stated "no identification was found to be posted at the well site." He also stated that the tank battery was located adjacent to a township road approximately 660 feet from the well site and that proper identification was posted on the tank battery.

On February 17, 1993, BLM issued another INC to Greenbrier based on the visit to the well site by the Forest Service employee. <sup>3/</sup> That INC stated that "as on [sic] 2/12/93 a well sign was not in place as required" and it indicated that Greenbrier would be assessed \$250 for the noncompliance. A Bill for Collection of \$250 accompanied the INC.

Greenbrier responded on February 26, 1993, stating: "Required sign was in place when this notice was written. It replaced a sign that we suspect was taken from the site by unknown parties." In addition, in a letter dated March 9, 1993, Greenbrier sought State Director review of the assessment, pursuant to 43 CFR 3165.3, explaining:

On 12-19-92 we received a notice from Bill LaFollette that our tank on the Williams #1 needed to have seals installed and a sign placed at the facility. The seals and sign were installed the same day. The sign was a standard plastic sign with the required information with a plywood backing.

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<sup>2/</sup> That regulation includes three subsections. Subsection (a) requires that "[e]very well within a Federal or Indian lease or supervised agreement shall have a well identification sign. All signs shall be maintained in legible condition." Subsection (b) provides: "For wells located on Federal and Indian lands, the operator shall properly identify, by sign in a conspicuous place, each well, other than those permanently abandoned." The same subsection also identifies the specific information required to appear on the sign. Subsection (c) dictates the requirements for signs for facilities at which Federal or Indian oil is stored.

<sup>3/</sup> Presumably, BLM and the Forest Service had entered into some type of agreement allowing Forest Service personnel to undertake BLM's inspection responsibilities. See 43 CFR 3161.3. However, no such agreement appears in the case record.

Unfortunately, this was during one of Ohio's hunting seasons and the sign was missing on the date that Forest Service people made a follow up visit. We suspect that it was taken by hunters to use for target practice. Signs are a real problem in this area as they are often shot up. For that reason, we hesitate to put them in a location where a bullet passing through one will damage equipment.

When we discovered that the original sign was missing, a replacement was made with sheet metal backing and it is now wired onto the pumping unit.

However, it is significant to note that at all times during this time period, the required sign was in place at the tank battery for this well which is near the well and obviously a part of the same facility. This can be verified by local personnel of the Wayne National Forest at Reno, Ohio as well as your inspector Mr. LaFollette.

Additionally, our field people in Monroe County are prepared to provide testimony that we did install the requested items, including the signs.

In the March 25, 1993, decision affirming the assessment, the State Director stated: "There is no record of certification from you, or other evidence, that the violation had been corrected prior to an onsite followup inspection on February 11, 1993, when it was again determined there was no well sign in place."

On appeal, Greenbrier has provided evidence to establish that it placed a sign at the well site in response to the December 1992 notice within the time allowed for abatement thereby correcting the cited violation. For this reason, we reverse the decision of the State Director and vacate the \$250 assessment.

The critical evidence presented on appeal is the sworn statement of James C. Massey, dated May 13, 1993. Therein, he states:

I am familiar with this well as I am the well tender who operates it. When Greenbrier's main office notified me that they had received a[n] NOV on missing valve seals, I immediately installed the required seals. Within the next few days, I also placed a sign at the well as required. [4/]

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4/ In his May 19, 1993, statement of reasons, enclosing Massey's statement, Heinrich states that there are two minor discrepancies between the statement he gave in his letter of Mar. 9, 1993, and Massey's statement. Heinrich explains that he originally stated that the seals were installed and the sign placed at the well on the same day. He admits that, as stated by Massey, it was a few days later, but, he points out, still within the abatement period. Also, he states that he said the original sign was

\* \* \* The sign I placed at the well head was on a piece of plywood with a 2" x 4" post. Since I couldn't drive it in the ground, I simply leaned it against the pumping unit.

After that, I had no reason to go down to the well to do my operations because the motor had been sent to the shop for repairs, and I could not pump the well while the motor was not on the well. [5/] All operations that I had to perform were done at the tank battery which is approximately 900 feet from the well. Because of this, I did not become aware that the sign was missing until the office told me that they received notice of the missing sign. When I heard this report, I immediately replaced the missing sign with another sign which was wired to the pumping unit.

On April 23, 1993, in an effort to get to the bottom of all this, my wife and I went to the well to pump [sic] and see if we could find the missing sign. After walking over a considerable area, I did find the sign down the hill below the well. This sign is shown in photo # 1 as it was found. Photo # 2 shows the details of the sign after I propped it up. The tall weeds were beaten down from a snowfall which took place March 13. Notice also the different positions of the walking beam on the pumping unit in the background of these two photos (# 1 and # 2). This is because I was pumping the well while the photos were taken. Photo # 3 shows the missing sign after I had taken it from where I found it and had placed it at the pumping unit.

[1] In Diversified Operating Co., 119 IBLA 107, 108-09 (1991), we held that a violation of 43 CFR 3162.6(a), requiring that every well within a Federal or Indian lease or supervised agreement must have a well identification sign, is a minor violation and that BLM may properly assess \$250, in accordance with 43 CFR 3163.1(a)(2), for failure to abate such a violation within the time allowed. In that case, the company admitted that it did not install a proper well sign within the abatement period.

In this case, although Greenbrier failed to certify compliance by returning the INC, the evidence presented by Greenbrier on appeal establishes that it, in fact, abated the violation within the time allowed. While the Forest Service employee found no sign at the time of his visit in February 1993, Massey's statement and accompanying photographs establish that at some point following its placement at the well in December 1992, the sign

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fn. 4 (continued)

plastic with a plywood backing, when it actually was only plywood. He asserts that these discrepancies were due to the fact that he "gathered

all initial information by phone discussion with employees."

5/ This fact is confirmed by BLM's inspection file for the well which contains a xerox copy of a photograph of the well, dated Dec. 12, 1992, with the notation "motor gone."

was removed by a person or persons unknown and discarded in tall weeds down over the hill from the well. BLM filed no response to the Massey statement.

Moreover, even if Greenbrier had not established that it placed the well sign in a timely manner in response to the December 1992 INC, there might be another basis for reversing BLM's decision. As noted above, 43 CFR 3162.6(c) contains the requirements for signs at storage facilities and states: "For situations of 1 tank battery servicing 1 well in the same location, the requirements of this paragraph and paragraph (b) [requirements for signs at wells] of this section may be met by 1 sign as long as it includes the information required by both paragraphs." The Forest Service employee reported in his letter dated February 23, 1993, that "[p]roper identification was posted at the tank battery and is in compliance." The present record, however, does not indicate whether the tank battery sign included "the information required by both paragraphs." Thus, we cannot say with certainty that the tank battery sign alone satisfied all the requirements of 43 CFR 3162.6.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the assessment of \$250 is vacated.

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Bruce R. Harris  
Deputy Chief Administrative Judge

I concur.

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Gail M. Frazier  
Administrative Judge

